

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE**

BLACKBIRD TECH LLC d/b/a  
BLACKBIRD TECHNOLOGIES,

Plaintiff,

v.

STUDIO 3 PARTNERS LLC d/b/a EPIX,

Defendant.

C.A. No. \_\_\_\_\_

JURY TRIAL DEMANDED

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**COMPLAINT FOR PATENT INFRINGEMENT**

Plaintiff Blackbird Tech LLC d/b/a Blackbird Technologies (“Blackbird Technologies”) hereby alleges for its Complaint for Patent Infringement against Defendant Studio 3 Partners LLC d/b/a EPIX (“EPIX”) on personal knowledge as to its own activities and on information and belief as to all other matters, as follows:

**THE PARTIES**

1. Plaintiff Blackbird Technologies is a Delaware limited liability company with its principal place of business located at 200 Baker Avenue, Suite 203, Concord, Massachusetts 01742.

2. On information and belief, Defendant EPIX is a Delaware limited liability company with a place of business at 1540 Broadway, 31st Floor, New York, New York 10036.

**JURISDICTION AND VENUE**

3. This is an action for patent infringement arising under the provisions of the Patent Laws of the United States of America, Title 35, United States Code §§ 100, *et seq.*

4. Subject-matter jurisdiction over Blackbird Technologies' claims is conferred upon this Court by 28 U.S.C. § 1331 (federal question jurisdiction) and 28 U.S.C. § 1338(a) (patent jurisdiction).

5. This Court has personal jurisdiction over EPIX because EPIX is subject to general and specific jurisdiction in Delaware. EPIX has also established minimum contacts with this forum. EPIX has been incorporated in Delaware at all relevant times. EPIX regularly conducts business in Delaware, including by marketing, selling, and/or offering for sale subscriptions to its movie and TV episodes library (the "EPIX Service") through Delaware residents' cable and/or satellite subscriptions. The EPIX Service is also accessible from its mobile apps, which include an option to download movies and TV episodes for offline viewing (the "EPIX App"). The EPIX App and EPIX Service are advertised through its website, [www.epix.com](http://www.epix.com), which is accessible throughout the United States, including Delaware. The exercise of personal jurisdiction comports with EPIX's right to due process because, as described above, EPIX has purposefully availed itself of the privilege of conducting activities within Delaware such that it should reasonably anticipate being haled into court here. As alleged herein, acts by EPIX in this district have caused injury to Blackbird Technologies.

6. Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1391(b) and (c) and § 1400(b) at least because Vimeo transacts business within this district and has committed acts in this district that infringe U.S. Patent No. 7,174,362.

U.S. PATENT NO. 7,174,362

7. U.S. Patent No. 7,174,362 (the "'362 patent" or "patent-in-suit") entitled, "Method and System for Supplying Products from Pre-Stored Digital Data in Response to Demands Transmitted via Computer Network," was duly and legally issued by the U.S. Patent

and Trademark Office on February 6, 2007. Blackbird Technologies is the owner by assignment of all right, title, and interest in and to the '362 patent, including all right to recover for any and all infringement thereof. The '362 patent is valid and enforceable. A true and correct copy of the '362 patent is attached as Exhibit A.

8. Claim 2 of the '362 patent recites, for example, a computer-implemented method of digital data duplication whereby requests are processed by a computer over a network. The computer comprises modules configured to execute the requests: A first module configured to create a task log based on incoming requests; a second module configured to store all available digital data for duplication, which comprises an expandable indexed archive of digital data, and a resource file for an output device; and a third module configured to retrieve requested digital data, download the data to an output device, and command the output device to transfer the data onto media.

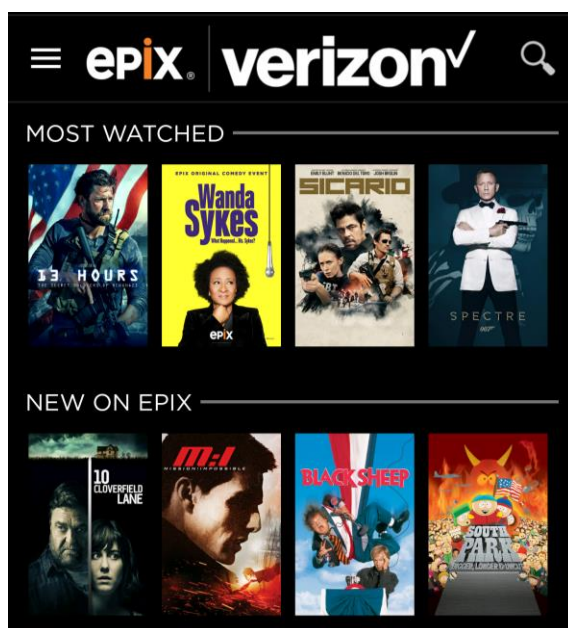
9. Claim 10 of the '362 patent recites, for example, a computer-implemented method of digital data duplication whereby requests are processed by a computer over a network. The computer comprises modules configured to execute the requests: A first module configured to create a task log based on incoming requests; a second module configured to store all available digital data for duplication; and a third module configured to retrieve requested digital data, download the data to an output device, and command the output device to transfer the data onto media. The storage capacity remaining in an output device is tracked.

COUNT I – INFRINGEMENT OF U.S. PATENT NO. 7,174,362

10. Blackbird Technologies reasserts and incorporates by reference Paragraphs 1 through 9 of this Complaint as if fully set forth herein.

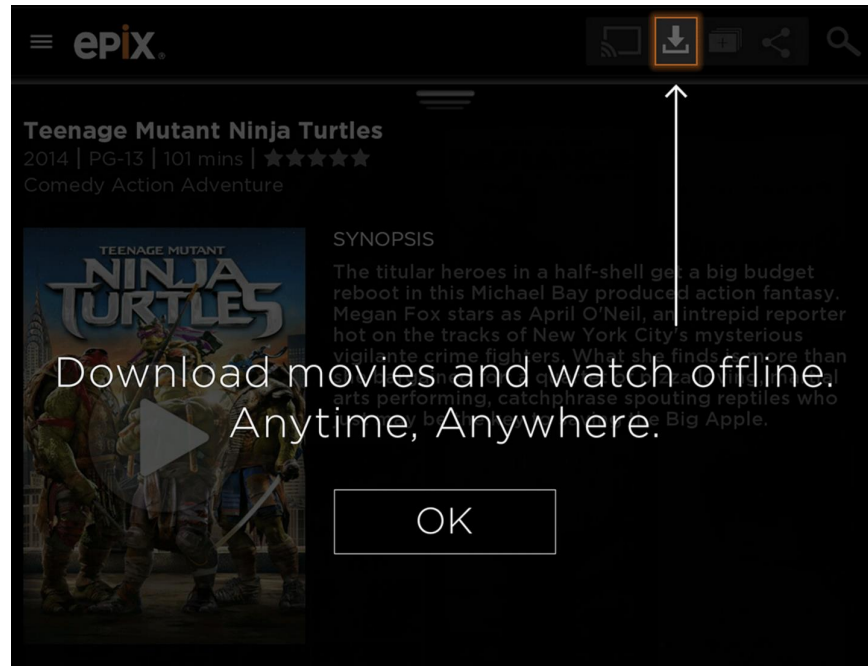
11. The EPIX App enables EPIX Service subscribers to download certain movies and TV episodes to their mobile device for offline viewing. *See, e.g.*, Press Release, EPIX, EPIX Offers Ability to Download Movies to Watch Offline (Sept. 15, 2015) (“Premium entertainment network EPIX announced that it will offer subscribers the ability to download hit movies directly to their mobile devices, allowing them to watch where they want, when they want – even without access to an internet connection. A leader in multiplatform entertainment, EPIX will be the first network to deliver offline viewing directly from its mobile apps, available across Kindle Fire and all Apple and Android mobile devices and tablets including iPads®, iPhones®, and Samsung and Nexus devices.”), available at <http://press.epixhd.com/press-releases/epix-offers-ability-to-download-movies-to-watch-offline/>.

12. EPIX stores an expandable indexed archive of movies and TV episodes, certain of which are available for download to a mobile device with the EPIX App. For example:



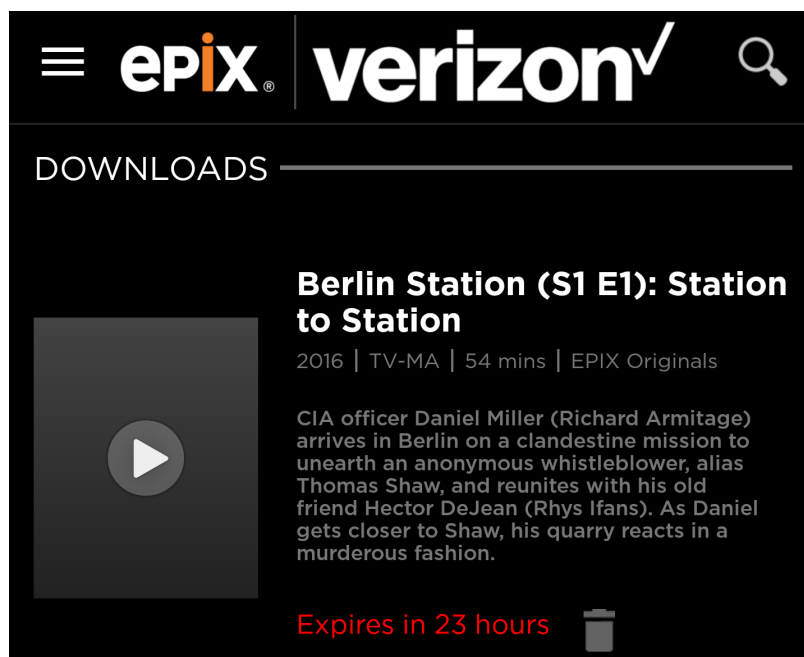
(EPIX App for Android (listing new movies available for download).)

13. EPIX takes download requests from the EPIX App upon selection of a download icon/command. For example:



(EPIX App for Android (showing download icon).)

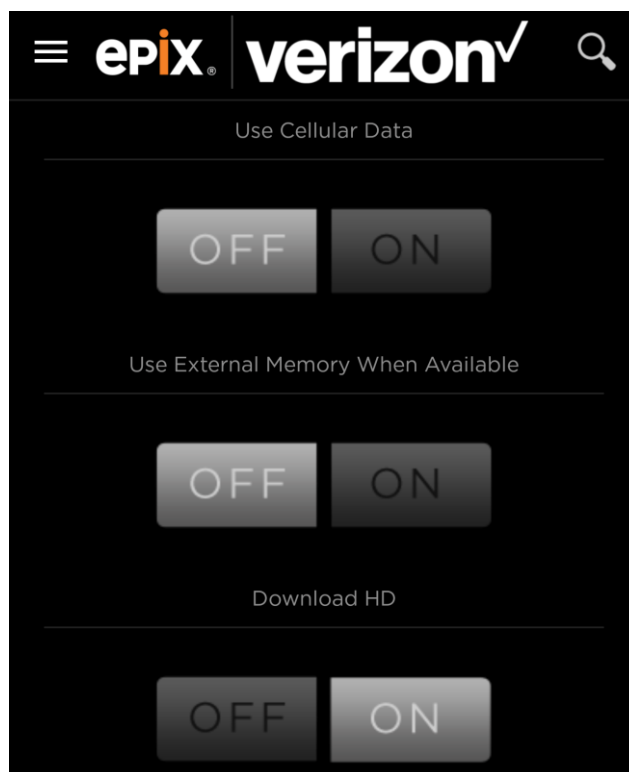
14. After EPIX processes an EPIX Service subscriber's download request from the EPIX App, the requested movie or TV episode is stored on that EPIX Service subscriber's mobile device such that it can be viewed offline:



(screenshot from EPIX App for Android (showing option to play downloaded TV episode).)

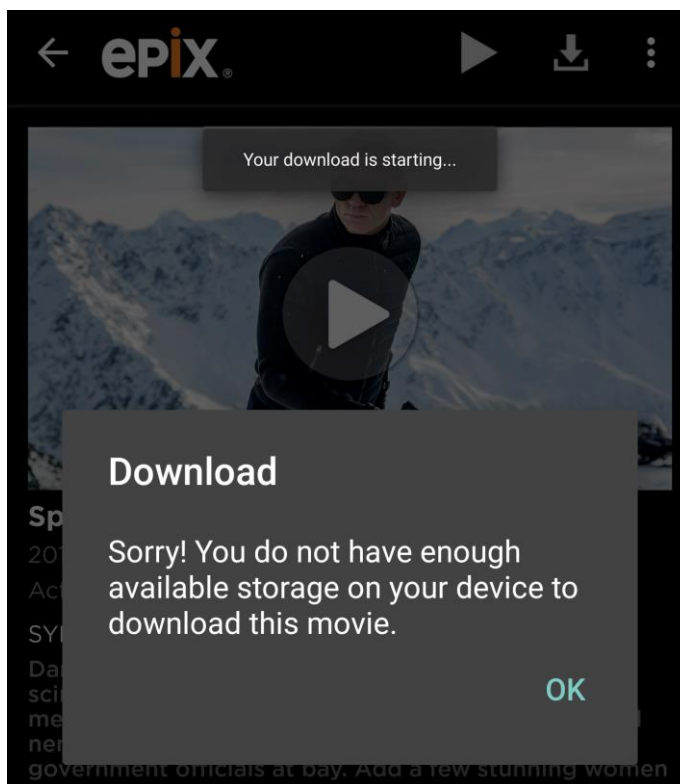
15. EPIX creates a task log based on incoming download requests as evidenced by, for example, the downloaded movie or TV episode’s identification on an EPIX Service subscriber’s “Downloads” page, *see supra* at ¶ 14, and the collection of various information by EPIX relating to an EPIX Service subscriber’s usage of the EPIX Service. *See, e.g.*, EPIX Privacy Policy and Your California Rights (Rev. Aug. 12, 2015) at ¶ 1(c)(i) (“We, and/or our Affiliates, use the Personal Information we collect from you in a variety of ways, including: ... Contacting you regarding the administration of your account, any services, features or functions you have enrolled in or registered to use, any Promotions you have participated in or have entered, any goods and/or services or product[s] or services you have ordered or any other transactions you have undertaken with the Site ....”), available at <http://corp.epix.com/privacy-policy/>.

16. EPIX maintains information associated with the EPIX Service subscriber’s mobile device, including for example any download limitations:



(EPIX App for Android (displaying Offline Preferences settings).) *See also, e.g.,* EPIX FAQ @ About EPIX.com, EPIX, [https://corp.epix.com/faq/files/About\\_EpixHDcom.php](https://corp.epix.com/faq/files/About_EpixHDcom.php) (“If you’d like to limit the maximum movie rating that can be watched, select the ‘Parental Controls’ option on the Me tab on EPIX.com. Choose the maximum rating you wish to allow to be watched and then enter your email address.”).

17. EPIX tracks the storage capacity remaining in the EPIX Service subscriber’s mobile device:



(message displayed on EPIX App for Android after a queued EPIX Service download request causes the total size of the pending downloads to exceed the mobile device's available storage space).

18. Therefore, EPIX, pursuant to 35 U.S.C. § 271(a), has directly infringed and continues to directly infringe, literally and/or under the doctrine of equivalents, one of more claims of the '362 patent, including at least claims 2 and 10.

### ***Damages***

19. Blackbird Technologies has sustained damages as a direct and proximate result of Defendant's infringement of the '362 patent.

20. As a consequence of Defendant's past infringement of the '362 patent, Blackbird Technologies is entitled to the recovery of past damages in the form of, at a minimum, a reasonable royalty.



21. As a consequence of Defendant's continued and future infringement of the '362 patent, Blackbird Technologies is entitled to royalties for its infringement of the '362 patent on a going-forward basis.

PRAYER FOR RELIEF

WHEREFORE, Blackbird Technologies respectfully requests that this Court enter judgment against Defendant, as follows:

A. Adjudging that Defendant has infringed at least claims 2 and 10 of the '362 patent literally and/or under the doctrine of equivalents, in violation of 35 U.S.C. § 271(a);

B. An award of damages to be paid by Defendant adequate to compensate Blackbird Technologies for Defendant's past infringement and any continuing or future infringement up until the date such judgment is entered, and in no event less than a reasonable royalty, including interest, costs, and disbursements pursuant to 35 U.S.C. § 284;

C. Ordering Defendant to continue to pay royalties to Blackbird Technologies for infringement of the '362 patent on a going-forward basis;

D. Adjudging that this case be exceptional under 35 U.S.C. § 285 and awarding enhanced damages, including costs and attorneys' fees, to Blackbird Technologies;

E. Awarding Blackbird Technologies pre-judgment and post-judgment interest at the maximum rate permitted by law on its damages; and

F. Granting Blackbird Technologies such further relief as this Court deems just and proper under the circumstances.

DEMAND FOR JURY TRIAL

Blackbird Technologies demands a trial by jury on all claims and issues so triable.

Dated: February 1, 2017

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